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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ALEX NIJMEH et al., Plaintiffs and Appellants, v. STATE FARM GENERAL INSURANCE COMPANY, Defendant and Respondent.	B282396 (Los Angeles County Super. Ct. No. BC594080)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert L. Hess, Judge. Affirmed.

Abir Cohan Treyzon Salo, Boris Treyzon, Cynthia Goodman and Meagan Melanson for Plaintiffs and Appellants.

Shaver, Korff & Castronovo and Michael J. O'Neill for Defendant and Respondent.

INTRODUCTION

Alex Nijmeh (Nijmeh) and Susan Nijmeh owned a rental house in Santa Clarita insured by State Farm General Insurance Company under a rental dwelling policy. Their tenant noticed a leak and contacted Nijmeh, who filed a claim with State Farm. Following its investigation State Farm denied coverage because the claim involved only "losses not insured" under the policy. Among other exclusions, State Farm concluded a "repeated or continuous seepage or leakage" of water caused the Nijmehs' losses.

The Nijmehs sued State Farm for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of Business and Professions Code section 17200. The trial court granted State Farm's motion for summary judgment, and the Nijmehs appealed. Because the Nijmehs have not demonstrated there was a triable issue of material fact regarding coverage of their claim under the policy with State Farm, and their other causes of action are predicated on their contractual relationship with State Farm, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Nijmehs' Tenants Discover a Water Leak, and the Nijmehs Attempt To Mitigate Damages*

The Nijmehs rented their house to the Martin family in 2011. On May 14, 2015 Leticia Martin discovered a small puddle of water coming from under a refrigerator the Martins had purchased and installed in the house. Thinking ice from the icemaker may have fallen on the floor and melted, Mrs. Martin

wiped up the water. The next day she saw another small puddle of water and left a towel over it so her children would not slip on the floor. She told her husband Greg Martin about the water, and later that day or the next day he pulled the refrigerator from its alcove and discovered two to three ounces of water on the floor where the refrigerator had been. He also noticed a small amount of water on a part of the refrigerator where the water supply valve connected.

Mr. Martin discovered the drywall behind the refrigerator was soft to the touch. He continued "poking around" the kitchen and the adjoining laundry room and discovered the entire wall separating the refrigerator from the laundry room was "saturated." He also found signs of water damage inside the lower cabinets in the laundry room. Even though Mr. Martin did not see any water leaking from the refrigerator's water supply line, he disconnected the line and called Nijmeh.

Mr. Martin first informed Nijmeh of the leak on May 16, 2015, and Nijmeh went to the house on May 23, 2015. Nijmeh called a contractor, Wyatt Sweitzer, who met Nijmeh at the house on May 26, 2015. Sweitzer found bubbles of water under the paint on the laundry room side of the common wall between the laundry room and the refrigerator. Water drained out of the bubbles when Sweitzer popped them.

Sweitzer returned to the house on June 1, 2015 to begin removing damaged drywall and cabinets and to install dehumidifiers. Sweitzer determined the lower two feet of drywall were wet and removed the lower four feet to ensure no drywall with positive moisture readings remained. Sweitzer also removed cabinets in the laundry room and kitchen. Sweitzer said "everything we brought out of there was like a sponge full of

water." He said he took most of the debris to a landfill, but left a portion of a face frame to a cabinet, a cabinet door, some floor tile, and a piece of kitchen countertop in the garage. During his cleanup and remediation work Sweitzer did not identify the source of the leak, but he said no additional water entered the area after the water line to the refrigerator was turned off.

B. *The Nijmehs Submit a Claim to State Farm*

The Nijmehs' policy included coverage for accidental direct physical loss to the dwelling and personal property and for loss of rents. The policy excluded from coverage a variety of "losses not insured" including: (1) losses caused by "wear, tear, marring, scratching, deterioration, inherent vice, latent defect and mechanical breakdown" or "rust or wet or dry rot," whether the loss occurs "suddenly or gradually, involves isolated or widespread damage, [or] arises from natural or external forces"; (2) any loss caused by "Water Damage, meaning . . . continuous or repeated seepage or leakage of water or steam from a . . . household appliance [or] plumbing system, including from, within or around any . . . plumbing fixture, including their walls, ceilings or floors," "regardless of whether the event occurs suddenly or gradually, involves isolated or widespread damage, [or] arises from natural or external forces"; (3) any loss caused by fungus, including the growth, proliferation, spread or presence of fungus and any losses related to the remediation of fungus and loss of use or delay in rebuilding, repairing or replacing covered property; (4) any loss caused by "conduct, act, failure to act, or decision of any person, group, organization or governmental body whether intentional, wrongful, negligent, or without fault"; and (5) any loss caused by "defect, weakness, inadequacy, fault or

unsoundness in . . . design, specifications, workmanship, construction, grading, compaction," or "materials used in construction or repair," or "maintenance" of any property on the premises. The policy similarly excluded any losses of rent suffered as a result of an uninsured loss.

On June 2, 2015 a public adjuster, Robert Barton, contacted State Farm on behalf of the Nijmehs and on June 4, 2015 provided State Farm a representation letter. According to Barton, a State Farm employee told him on June 2 to take photographs of the affected areas, remove the water-damaged building materials, and begin drying the area to mitigate the Nijmehs' losses. State Farm assigned the claim to Jared Stuart, who spoke to Barton on June 8, 2015 and scheduled an inspection for June 11, 2015.

At the inspection, Barton told Stuart the cause of the loss was related to the refrigerator. Stuart wanted to inspect the cabinets and drywall surrounding the refrigerator to evaluate whether the damage was consistent with a slow or sudden water leak, but Stuart learned the cabinets and drywall had been removed and discarded. Barton offered to send Stuart photographs of the affected areas and told Stuart the disconnected supply line to the refrigerator was on top of the refrigerator. Stuart did not take or inspect the supply line at that time, nor apparently did he inspect the removed materials in the garage.

Barton also gave State Farm several reports and receipts from the Nijmehs' contractors. These included a June 9, 2015 report from Andersen Environmental stating that "the client" informed Andersen Environmental that a "refrigerator line leak caused water damage to the kitchen, bar area and laundry room."

Among other things, Andersen Environmental found "[e]levated moisture readings . . . in the tile flooring located w[h]ere the refrigerator was" and mold growth in the sheer paneling behind the bar area and the floor tile under the refrigerator.[1] A June 12, 2015 invoice from Hallway Plumbing stated the plumber inspected the "ice maker line and shut off valve," "mop sink lines," "hot and cold [and] both angle stops," and "drains for mop sink," and found no leaks. A June 15, 2015 invoice from 5 Star Appliance stated the refrigerator "water valve and [one-quarter inch] water line . . . have to be replaced in order to stop the leak."

C. *State Farm Denies the Nijmehs' Claim*

On June 16, 2015 State Farm issued a reservation of rights letter stating State Farm could not confirm coverage for the Nijmehs' loss at that time because State Farm had not determined the cause and duration of the water leak. The letter stated State Farm would continue investigating the cause of the loss by, among other things, retaining a leak detection specialist, inspecting any affected drywall and cabinetry the Nijmehs retained, reviewing the photographs promised by the public adjuster, and inspecting the refrigerator's water line. In that regard the letter stated, "Mr. Martin will possibly need to fill out a chain of custody so that we can retain the flex supply line to the fridge." The letter also stated, "The demolition and removal of

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[1] Neither Barton nor Stuart could determine a reason for mold growth in this area, assuming the leak originated in the refrigerator's water supply line, icemaker line, or valve. Sweitzer and Taylor Leak Detection, however, did not find any other leak in the house.

the drywall and cabinetry may have substantially prejudiced our ability to determine the cause and scope of this loss." The letter cited a provision of the Nijmehs' policy requiring the insured to give immediate notice to State Farm following a loss and to "exhibit the damaged property."

Taylor Leak Detection inspected the property and submitted a report to State Farm on June 23, 2015. The report stated that, because "[t]he ice maker supply line, the line which runs between the ice maker shut off valve and the solenoid valve attached to the refrigerator, was removed,"[2] Taylor Leak Detection did not inspect it.[3] The report, however, stated "an appliance person suspected that a leak occurred either from a crack on the solenoid valve or along the ice maker supply line itself. The ice maker line is a steel braided tube. A rust spot was noted along the tube. The tube should be leak tested." Taylor Leak Detection tested the water piping from the water meter up the service line and "throughout the house and property," the trap and drain for the mop sink, and the stand pipe drain for the washing machine and found no leaks. Taylor Leak Detection also

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[2] "A solenoid is 'a coil of wire . . . that when carrying a current acts like a magnet so that a moveable core is drawn into the coil when a current flows and that is used [especially] as a switch or control for a mechanical device . . . .'" (*Donlen v. Ford Motor Co.* (2013) 217 Cal.App.4th 138, 143, fn. 2.)

[3] According to the declaration of Susan Nijmeh, the refrigerator supply line was on top of the refrigerator at the inspection on June 23, 2015. It is unclear whether the ice maker supply line was also in the house at that time.

pressure tested the water piping and discovered the water pressure inside the house was 140 [pounds per square inch]. According to Taylor Leak Detection, the recommended water pressure inside a house is 80[pounds per square inch] or below to protect "more delicate plumbing inside [a] house, such as the valves and tubing at the toilets, ice maker, reverse osmosis unit, etc."

An inspector from the Tile Institute of America also submitted a report to State Farm on June 30, 2015. That report concluded that neither the tiles nor the grout surrounding the refrigerator area suffered any adverse effects from the leak. The inspector, however, noted rusted nail heads on the nails attaching the oriented strand board to the studs at the lower two feet of the wall behind the refrigerator.[4]

On July 2, 2015 State Farm requested consent from Mr. Martin to take custody of the refrigerator's water supply line for testing. State Farm also asked Nijmeh and Barton not to discard any parts related to the refrigerator. The record suggests State Farm never took possession of the supply line, and State Farm concedes it never tested the supply line or the ice maker line.

State Farm asked Taylor Leak Detection to determine whether the cause of the damage "may have been a long term leak." In a second report, dated July 16, 2015, Taylor Leak

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[4] "An oriented strand board is a wood product made by layering thin strands of wood in specific orientations. The strands are held together by various adhesives. The product is typically used in place of plywood as sheathing for walls, floors and roofs." (*Cancer Action NY v. St. Lawrence County Newspapers Corp.* (N.Y. App. Div. 2004) 12 A.D.3d 880, fn. *.)

Detection stated "the only evidence we have which might help us determine whether a leak is short term or long term is the condition of the building materials near the leak site." For example, "[i]f the building materials have become discolored, the indication is that exposure to water was of longer duration." Because the building materials "were removed prior to [the] inspection," Taylor Leak Detection had "no evidence with which to make a determination whether the leakage was long term or short term." The second report stated, however, that another contractor's theory that the leak may have originated from a crack in the solenoid valve or the water supply line to the refrigerator was "consistent with the location of the corrective work which was done, as that work was done in the vicinity of the refrigerator, and no other leak sources were put forward."

On July 1, 2105 State Farm received photographs of the affected areas of the house and shared them with Taylor Leak Detection. On July 20, 2015, Tighe Taylor, the president of Taylor Leak Detection, wrote a letter stating the photographs "show[ed] signs of exposure of wood stained, painted, and other surfaces to water." But, Mr. Taylor said, "[w]e are not engineers," and "[w]e do not have sufficient credentials to draw conclusions from photographs." Mr. Taylor advised State Farm to retain a forensic engineer to evaluate the photographs and suggested Exponent Failure Analysis Associates (Exponent).

State Farm retained Exponent, which on August 6, 2015 submitted a report to State Farm prepared by Exponent's Managing Engineer, Dr. Jeffrey P. Hunt. The report stated that Exponent reviewed the photographs provided by Barton, as well as a transcribed statement from Mr. Martin, a timeline provided by Nijmeh to Barton, the Andersen Environmental report, the

Taylor Leak Detection reports, the report from the Tile Institute of America, and a renovation estimate from a contractor retained by State Farm.

Exponent also reviewed photographs taken on June 1, 2015 showing areas of drywall removed in the kitchen, laundry room, and bar areas, the location of the refrigerator, the area behind the refrigerator, its surrounding cabinets, and moisture readings from an instrument that measures moisture. The Exponent report stated the photographs showed staining consistent with exposure to water at the base of the cabinets and wood enclosure around the refrigerator. The report continued: "The color of the stain and degree of deterioration of the wood trim at the base of the cabinets/refrigerator enclosure indicate the condition is the result of prolonged (months to years) exposure to excessive moisture. In addition, the height of the stain indicates that the moisture has been wicking up the wood cabinets/enclosure for a long period of time (on the order of months to years)." The report concluded that "damage to the finishes and cabinetry behind and adjacent to the refrigerator is the result of prolonged (months to years) exposure to excessive moisture. Absent a prior plumbing leak in this area of the residence (none were reported), the likely cause of the long-term moisture was a slow, long-term (on the order of months to years) leak in the steel braided supply line to the ice maker and/or associated connections. The steel braided supply line was removed from the residence and was not available for our inspection."

State Farm denied the Nijmehs' claim on August 13, 2015. State Farm concluded that, among "other potential contributing causes" resulting in excluded losses, a "repeated or continuous seepage or leakage" caused the damage to the Nijmehs' house.

Because the Nijmehs' claim for lost rents was based on a loss not insured, State Farm also denied that claim. State Farm's letter denying coverage also stated that actions by the Nijmehs or their agents, including the removal and disposal of affected cabinetry, "meant that State Farm could not inspect the damaged property" and "may provide further grounds for denial of coverage for this loss."

D. *The Nijmehs Sue State Farm*

The Nijmehs filed this action against State Farm on September 9, 2015.[5] The Nijmehs alleged that State Farm failed to conduct a thorough, complete, and fair investigation of their claim and that they provided State Farm evidence that their loss "was the result of a sudden and accidental water intrusion and not a slow leak." Without identifying that evidence, the Nijmehs alleged State Farm "ignored" it. The Nijmehs also alleged they removed and disposed of the damaged drywall and cabinetry "in compliance with their contractual obligation to mitigate their damages," and they referred to Dr. Hunt throughout the complaint as an "earthquake expert." They alleged State Farm's conduct "was part of a long-established pattern and practice . . . designed to force claimants to accept less policy benefits than they would otherwise be entitled to receive under the terms of their policies." Based on these and other allegations, the Nijmehs

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[5] The operative second amended complaint included three causes of action against Stuart. The trial court sustained Stuart's demurrer without leave to amend and subsequently dismissed him as a defendant. The Nijmehs did not appeal this ruling.

sought damages and other relief for breach of contract, breach of the implied covenant of good faith and fair dealing, and violation of Business and Professions Code section 17200.

E. *State Farm Moves for Summary Judgment*

State Farm filed a motion for summary judgment or in the alternative for summary adjudication arguing it did not breach the policy or act in bad faith because State Farm's investigation revealed no evidence of a sudden intrusion of water into the Nijmehs' rental house. Instead, all evidence indicated a very slow leak that likely originated from the refrigerator's water supply line or associated connections. Because the policy excluded losses caused by continuous or repeated seepage of water from a plumbing system or appliance, State Farm argued it did not breach the policy by denying coverage for the Nijmehs' losses. State Farm also argued that, in the absence of coverage, the Nijmehs could not prove a breach of the covenant of good faith and fair dealing or a violation of Business and Professions Code section 17200.

In support of its motion State Farm submitted the reports and invoices of Andersen Environmental, Taylor Leak Detection, Exponent, Hallway Plumbing, and 5 Star Appliance; deposition testimony from the Martins, Sweitzer, and Susan Nijmeh; a variety of correspondence and statements; and declarations of Stuart and Dr. Hunt, among others. Dr. Hunt's declaration listed his credentials, including a Ph.D. and Masters of Science degree in civil and environmental engineering from the University of California, and a Bachelor of Science degree in architectural engineering from the University of Texas. Dr. Hunt stated he was also a licensed professional civil engineer in the State of

California and a Safety Assessment Evaluator with the California Emergency Management Agency. He said his practice included expertise in "engineering analysis of complex structures, performance-based earthquake engineering, and damage assessment of steel, concrete, and wood-frame building structures." Dr. Hunt stated: "Over my career, I have investigated damage to structures due to earthquake, wind, blast loading, water intrusion, earth movement and material degradation such as wood decay and steel corrosion. I am also experienced with assessing claims of design deficiencies and construction defects."

In evaluating the nature of, and the damage caused by, the water intrusion at the Nijmehs' house, Dr. Hunt stated he had reviewed the transcript of an interview with Mr. Martin, a timeline prepared by Nijmeh, the Andersen Environmental report, the Taylor Leak Detection report dated June 23, 2015, the Tile Institute of America report, a restoration estimate from a building contractor, and the photographs of some of the damaged drywall and cabinets. Dr. Hunt stated: "Based on my review of the information provided, including the photographs, I concluded that the damage to the finishes and cabinetry behind and adjacent to the refrigerator resulted from prolonged (months to years) exposure to excessive moisture. Absent a previous leak in the area of the refrigerator, it is my opinion that the reported damage was likely caused by exposure to long-term moisture from a slow leak."

The Nijmehs opposed the motion, arguing "there was a massive amount of water that caused damage to the property, it had merely been soaked up into the dry wall like a sponge." They argued the evidence showed that high water pressure inside the

house "caused the delicate plumbing of the refrigerator water line and valve to burst which caused the damages to the property." In support of this theory the Nijmehs submitted their declarations and the declaration of Mr. Martin, deposition testimony of Dr. Hunt, Susan Nijmeh, Stuart, Sweitzer, and Gerald Halweg of the Tile Institute of America, among others, and an invoice from a plumbing contractor.

Mr. Martin stated that from the time his family moved into the house until May 14, 2015 "there was never any water leaking around the fridge. There was never any water damage or wetness on the wall that separates the kitchen and the laundry room." Had it been there, he said he would have noticed it because he usually entered the house from the garage, which goes directly into the laundry room and then into the kitchen. He said, "If the water had been there for a long period of time, we would have seen the water and/or smelled the wetness and mold." He also said he would have noticed wetness on the wall behind the drawers to the left of the refrigerator because his children used the bottom drawer to store their artwork and other papers. He said he pulled out the entire bottom drawer once a month to retrieve items that had been shoved behind the back of the drawer so that the drawer would close properly. "If the water had been there for a long time or had been an ongoing leak I would have noticed it because the art work would have been wet and the wall at the back of the drawer would have also been wet. I would have also noticed the large area of darkened wood on the left side of the refrigerator alcove considering how frequently I had to bend down and pull the drawer out." The Nijmehs argued that "[a]ll of the foregoing indicates that this was a sudden and accidental leak."

The Nijmehs also objected to Dr. Hunt's declaration on the ground State Farm failed to inform Dr. Hunt of a prior leak in the Nijmehs' house, and Dr. Hunt's opinion that the loss was caused by a slow leak was conditioned on his assumption that there had been no prior leak "in the area of the refrigerator." According to Susan Nijmeh, the house suffered a previous water leak on June 15, 2012 that affected the upstairs bathroom, upstairs hallway, and the downstairs laundry room. The Nijmehs had filed a claim with State Farm regarding that loss, which they said was "resolved." The Nijmehs argued that, because State Farm had knowledge of this prior leak, State Farm should have informed Dr. Hunt of it. The Nijmehs also argued Dr. Hunt was not qualified to give an opinion on the nature of the water leak because he "had no experience with water losses related to plumbing systems and professed ignorance of [the type of] wood involved."

To the extent State Farm denied coverage on the basis of wear and tear, deterioration, latent defect, or mechanical breakdown, the Nijmehs argued State Farm failed to produce credible evidence that any of those conditions caused a failure of the supply line, solenoid valve, or refrigerator. They also contended State Farm failed to adequately investigate their claim by, among other things, failing to inspect the refrigerator supply line and the damaged materials set aside in the garage.

At the hearing on the motion, the trial court stated, "Everything I see supports the conclusion that a significant volume of water was required to so saturate both the drywall and the cabinetry as to cause the damage that was found. And I find no evidence of a leak that would do that as anything remotely resembling sudden." The trial court granted State Farm's motion

for summary judgment and, in a separate, subsequent order, overruled the Nijmehs' evidentiary objections.[6] The trial court entered judgment on April 24, 2017, and the Nijmehs timely appealed.

DISCUSSION

A. *The Trial Court Did Not Err in Overruling the Nijmehs' Objections to Dr. Hunt's Declaration*

We address first the Nijmehs' argument that the trial court erred in admitting the declaration of Dr. Hunt. The Nijmehs objected to his declaration on four grounds: (1) Dr. Hunt was not qualified to provide an expert opinion on the duration of the leak; (2) State Farm did not provide Dr. Hunt with information concerning the prior leak in the Nijmehs' house; (3) Dr. Hunt's opinion did not take into account the type of wood used to construct the cabinets; and (4) Dr. Hunt did not inspect the refrigerator's water supply line or explain how the leak was related to that supply line.

We conclude the trial court's evidentiary rulings were not erroneous, whether we review those rulings for abuse of discretion or de novo. (See *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 535 ["we need not decide generally whether a trial court's

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[6] We augment the record to include the trial court's February 6, 2017 ruling on submitted matters in which the trial court overruled each of the objections in "Plaintiff's Objections to Defendant State Farm General Insurance Company's Evidence in Support of Its Motion For Summary Judgment, Or In The Alternative, Summary Adjudication of Issues." (See Cal. Rules of Court, rule 8.155(a)(1)(A).)

rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo"]; *Alexander v. Scripps Memorial Hospital La Jolla* (2018) 23 Cal.App.5th 206, 226 (*Alexander*) ["in *Reid v. Google, Inc.* . . . the California Supreme Court expressly declined to reach the issue of the appropriate standard of review for reviewing a trial court's rulings on evidentiary objections made in connection with a summary judgment motion"]; *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal.App.5th 343, 368 ["[c]ourts are split regarding the proper standard of review for the trial court's evidentiary rulings in connection with motions for summary judgment and summary adjudication"]; *In re Automobile Antitrust Cases I & II* (2016) 1 Cal.App.5th 127, 143 [noting the standard of review for evidentiary rulings on summary judgment is not settled]; cf. *Pipitone v. Williams* (2016) 244 Cal.App.4th 1437, 1451 ["de novo review is proper in [the] context" of rulings on evidentiary objections based on hearsay].)[7]

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[7] The court in *Alexander* stated: "De novo review is proper where evidentiary objections raise questions of law, such as whether or not a statement is hearsay. [Citations.] In contrast, evidentiary objections based on lack of foundation, qualification of experts, and conclusory and speculative testimony are traditionally left to the sound discretion of the trial court. These are the types of evidentiary objections at issue in this case and, thus, we apply an abuse of discretion standard of review." (*Alexander*, *supra*, 23 Cal.App.5th at p. 226.)

1. *Applicable Law*

"A person is qualified to testify as an expert if he has special knowledge, skill, experience, training, or education sufficient to qualify him as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).) "'Expertise, in other words, "is relative to the subject," and is not subject to rigid classification according to formal education or certification.'" (*ABM Industries Overtime Cases* (2017) 19 Cal.App.5th 277, 294 (*ABM Industries*).) "Rather, an expert's qualifications can be established in any number of different ways, including 'a showing that the expert has the requisite knowledge of, or was familiar with, or was involved in, a sufficient number of transactions involving the subject matter of the opinion.'" (*Ibid.*; see *Howard Entertainment, Inc. v. Kudrow* (2012) 208 Cal.App.4th 1102, 1115 (*Howard Entertainment*).) "'The determinative issue in each case must be whether the witness has sufficient skill or experience in the field so that his testimony would be likely to assist the jury in the search for the truth, and no hard and fast rule can be laid down which would be applicable in every circumstance.'" (*ABM Industries*, at p. 294; see *Howard Entertainment*, at p. 1115.) "[Q]uestions regarding *the degree* of an expert's knowledge go more to the weight of the evidence presented than to its admissibility." (*ABM Industries*, at p. 294; see *Jordan v. Allstate Ins. Co.* (2004) 116 Cal.App.4th 1206, 1217.)

"Once qualified, an expert may give an opinion '[b]ased on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion upon the subject to

which his testimony relates.'" (*Howard Entertainment*, *supra*, 208 Cal.App.4th at p. 1117; see Evid. Code, § 801, subd. (b).) "'The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed.'" (*Alexander*, *supra*, 23 Cal.App.5th at p. 225.) Thus, "[a]n 'expert opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. [Citation.] Moreover, an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based.'" (*Ibid.*; see *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 155 ["'when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an "expert opinion is worth no more than the reasons upon which it rests"'"].)

2. *Dr. Hunt Was Qualified To Give an Opinion on the Duration of the Leak*

The Nijmehs argue Dr. Hunt "was unqualified to attest as to the duration of a water loss or the source of a water leak" because he was an expert on losses resulting from earthquakes, not water damage. But Dr. Hunt's declaration stated that he specialized in damage assessments of various types of structures, including "steel, concrete, and wood-frame building[s]," and that over the course of his career he had investigated damage to structures due to "water intrusion" and "material degradation

such as wood decay." The Nijmehs do not challenge the veracity of these statements. The fact that Dr. Hunt might also (or even primarily) have expertise in assessing damage caused by earthquakes did not mean he was not qualified to assess damage caused by water or other forces. Dr. Hunt stated in his deposition that a colleague referred the Nijmeh project to him because she thought it was "perfect for [him]." Dr. Hunt explained he had "been doing a lot of these types of residential insurances cases, [plumbing] failure investigations over the past several years. So it was sort of in the run of things I was working on – a lot of these types of projects." (See *Howard Entertainment*, *supra*, 208 Cal.App.4th at p. 1115 ["[t]he foundation required to establish the expert's qualifications is a showing that the expert has the requisite knowledge of, or was familiar with, or was involved in a sufficient number of transactions involving the subject matter of the opinion"].) Finally, Dr. Hunt testified in his deposition he had studied how wood reacts when exposed to water, although his testimony did not include specific information about those studies. While "additional information regarding the specifics of [his] expertise in matters relevant to this case" may have been "preferable," the trial court did not err in overruling the Nijmehs' objections to Dr. Hunt's qualifications. (See *ABM Industries*, *supra*, 19 Cal.App.5th at p. 296.)

3. *Dr. Hunt's Opinion Did Not Lack Foundation*

As discussed, Dr. Hunt stated in his declaration: "Absent a previous leak in the area of the refrigerator, it is my opinion that the reported damage was likely caused by exposure to long-term moisture from a slow leak." The Nijmehs argue Dr. Hunt's opinion lacked foundation because State Farm did not tell him

about the 2012 leak that reportedly began upstairs and also affected the laundry room. The Nijmehs presented no evidence, however, the previous leak was in the area of the refrigerator, caused any damage in the area of the refrigerator, caused any of the damage related to the 2015 leak, or caused any damage as a result of a sudden intrusion of water covered by the policy. Dr. Hunt's opinion was not inadmissible because there may have been a leak in another part of the house in 2012.

The Nijmehs also argue Dr. Hunt's opinion lacked foundation because, although he admitted that different types of wood react differently to water, he did not know the type of wood used to construct the damaged cabinets. Neither Dr. Hunt's declaration nor his deposition testimony suggested that a different type of wood would not have stained or deteriorated over time, and the Nijmehs introduced no evidence supporting that proposition. The Nijmehs' argument might affect the weight a trier of fact would accord Dr. Hunt's opinion, but it did not make his opinion inadmissible. (See *ABM Industries*, *supra*, 19 Cal.App.5th at p. 294.)

Finally the Nijmehs argue Dr. Hunt's opinion lacked foundation because he did not inspect the refrigerator's water supply line. Dr. Hunt stated that he relied on a variety of sources in rendering his opinion, including the transcript of an interview with Mr. Martin, a timeline prepared by Nijmeh, the Andersen Environmental report, the June 23, 2015 Taylor Leak Detection report, the Tile Institute of America report, a restoration estimate from a building contractor, and photographs of damaged building materials. The Nijmehs do not argue and have not shown that any of this information was unreliable or that Dr. Hunt unreasonably relied on this information in forming his

opinion. (See *Olive v. General Nutrition Centers, Inc.* (2018) 30 Cal.App.5th 804, 821-822 [an expert opinion may be based on information furnished to the expert by a reliable source "so long as the information is of a type reasonably relied upon by professionals in the relevant field"].) Moreover, if the Nijmehs disagreed with Dr. Hunt's hypothesis or opinion, they could have presented a different expert opinion or elicited contradictory deposition testimony from Dr. Hunt. (See *Howard Entertainment*, *supra*, 208 Cal.App.4th at p. 1121 ["Any flaws in an expert's opinion may be exposed through the adversary's own evidence or in cross-examination. Those imperfections do not make the expert's sources so unreliable or speculative as to lead to rejection."].) They did neither. Dr. Hunt's inability to inspect the water supply line or icemaker line did not render his opinion inadmissible.

To be sure, Dr. Hunt's declaration may not have complied with the requirement that an expert provide "a reasoned explanation of why the underlying facts lead to the ultimate conclusion." (*Alexander*, *supra*, 23 Cal.App.5th at p. 225; accord, *Sanchez v. Kern Emergency Medical Transportation Corp.*, *supra*, 8 Cal.App.5th at p. 155; *Lynn v. Tatitlek Support Services, Inc.* (2017) 8 Cal.App.5th 1096, 1116; *Jennings v. Palomar Pomerado Health Systems, Inc.* (2003) 114 Cal.App.4th 1108, 1117.) Dr. Hunt concluded the damage to the Nijmehs' house resulted from prolonged exposure to excessive moisture caused by a slow leak, but he did not explain the bases for his conclusion. The Nijmehs, however, do not argue on appeal that Dr. Hunt's declaration did not provide sufficient reasons for his conclusion. Moreover, even if they had made that argument, and even if the trial court erred in overruling the Nijmehs' objections to Dr.

Hunt's declaration on that ground, any error in admitting Dr. Hunt's declaration was harmless because the Exponent report, to which the Nijmehs did not object in the trial court and whose admissibility the Nijmehs do not challenge on appeal, stated the same conclusions Dr. Hunt stated in his declaration and provided a reasoned explanation for the same conclusions. Thus, any error in admitting Dr. Hunt's declaration was harmless. (See *ABM Industries*, *supra*, 19 Cal.App.5th at p. 292.)

B. *The Trial Court Properly Granted State Farm's Motion for Summary Judgment*

1. *Applicable Law and Standard of Review*

"'An insured can pursue a breach of contract theory against its insurer by alleging the insurance contract, the insured's performance or excuse for nonperformance, the insurer's breach, and resulting damages.'" (*Case v. State Farm Mutual Automobile Ins. Co., Inc.* (2018) 30 Cal.App.5th 397, 402.) "'An insurer may "seek[ ] summary judgment on the ground the claim is excluded," in which case it has "the burden . . . to prove that the claim falls within an exclusion."'" (*Medina v. GEICO Indemnity Co.* (2017) 8 Cal.App.5th 251, 259.) "'To satisfy its burden, an insurer need not "disprove every possible cause of the loss," and once the insurer establishes the claim is excluded, the burden shifts to the insured to show a triable issue of material fact exists.'" (*Ibid.*; accord, *Roberts v. Assurance Co. of America* (2008) 163 Cal.App.4th 1398, 1406; see *Case*, at p. 402 ["'the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a

burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact"'].) "'There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.'" (*Roberts*, at p. 1403; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 860.) "[A] party may rely on reasonable inferences drawn from direct and circumstantial evidence to satisfy its burden on summary judgment." (*Collin v. CalPortland Co.* (2014) 228 Cal.App.4th 582, 592.)

"'We review the trial court's ruling on a summary judgment motion de novo, liberally construing the evidence in favor of the party opposing the motion and resolving all doubts about the evidence in favor of the opponent. [Citation.] We consider all of the evidence the parties offered in connection with the motion, except that which the court properly excluded.'" (*Delgadillo v. Television Center, Inc.* (2018) 20 Cal.App.5th 1078, 1085; see *Grotheer v. Escape Adventures, Inc.* (2017) 14 Cal.App.5th 1283, 1292-1293.) "Although we independently assess the grant of summary judgment, our review is governed by a fundamental principle of appellate procedure, namely, that "'[a] judgment or order of the lower court is presumed correct,'" and thus, "'error must be affirmatively shown.'"" (*Case v. State Farm Mutual Automobile Ins. Co., Inc.*, *supra*, 30 Cal.App.5th at p. 401.)

2. *The Nijmehs Have Not Identified a Triable Issue of Fact on Coverage*

State Farm denied coverage of the Nijmehs' claim because the claimed loss was a "Loss Not Insured" under multiple

provisions of the policy, including the exclusion for "Water Damage." The trial court ruled State Farm met its initial burden to show the Nijmehs' losses were caused by "Water Damage," which the policy defined as "continuous or repeated seepage or leakage of water or steam from a . . . household appliance; or . . . plumbing system," and the Nijmehs failed to demonstrate a triable issue of material fact.

The Nijmehs argue the following facts demonstrate the damage to their house "was not the result of a long-term leak": (1) Mr. and Mrs. Martin stated they regularly used areas of the kitchen and laundry room and never observed any water prior to finding the water on the floor in front of the refrigerator; (2) art supplies and papers stored in a bottom drawer next to the refrigerator were dry; (3) Sweitzer did not find mold in his inspection, although Andersen Environmental did; and yet (4) "there was an enormous amount of water lodged in the drywall." The Nijmehs argue these facts "point[] to a leak that did not exist over the span of months or years as surmised by [Dr.] Hunt." But none of these facts, or reasonable inferences from these facts, even viewed in the light most favorable to the Nijmehs, would allow a trier of fact to conclude a sudden intrusion of water caused the damage.

Although no evidence definitively established the source of the leak, the evidence strongly suggested the culprit was the refrigerator's water supply line, the icemaker line, or an associated valve. Indeed, there was no evidence of any other source, and the Nijmehs conceded in their opposition to the motion for summary judgment that the evidence showed high water pressure inside the house caused the refrigerator water line and valve to break. Moreover, no one saw any water pooling

on the floor or reported any leaks after Mr. Martin disconnected the water line to the refrigerator.

Undisputed evidence also showed extensive water damage to the Nijmehs' kitchen, laundry room, and bar areas. Sweitzer removed over a thousand pounds of debris from the house and reported it was all full of water. He said the damage to the drywall was consistent with a floor level water leak, which the drywall absorbed like a "wick."

None of the testimony or evidence cited by the Nijmehs supports a reasonable inference of a sudden intrusion of water sufficient to cause such extensive damage. The fact the Martins regularly used areas of the kitchen and laundry room and did not observe any water before Mrs. Martin noticed the small pool on May 14, 2015 does not support such an inference. In fact, it supports the opposite inference. The few ounces of water the Martins spotted in front of and behind the refrigerator could not have caused extensive damage to the kitchen, laundry room, and bar areas. (See *Freedman v. State Farm Ins. Co.* (2009) 173 Cal.App.4th 957, 964 ["[g]iven the small size of the hole(s) through which the water leaked, and given the extensive amount of water damage . . . , the leak must have lasted a sufficiently long time, or stopped and started sufficiently many times, to count as 'continuous' or 'repeated' under any reasonable construction of those terms"].)

The fact that Mr. Martin did not notice moisture at the back of a drawer next to the refrigerator also does not support the Nijmehs' theory. Mr. Martin said he usually emptied the drawer once a month, but he did not indicate when he had last emptied the drawer. Moreover, the Nijmehs did not introduce any evidence showing how the bottom drawer looked compared to

undamaged drawers near the refrigerator. The Nijmehs also point to the fact that Sweitzer did not find mold in his inspection, but they concede that Andersen Environmental did, which also suggests the leak was sufficiently long-lasting to cause mold growth. Finally, as stated, that "there was an enormous amount of water lodged in the drywall" does not support the Nijmehs' theory. A trier of fact could not reasonably infer from the evidence that a leak in a quarter-inch supply line or associated valve could have suddenly caused such extensive damage. Instead, the evidence uniformly indicated the refrigerator water supply line, icemaker line, or valve sprayed, streamed, or otherwise leaked water over time. (See *Brown v. Mid-Century Ins. Co.* (2013) 215 Cal.App.4th 841, 853 ["[a] spray/stream/leak of water over several months is not" a "sudden discharge of water"].)

3. *The Nijmehs' Remaining Causes of Action Fail*

The Nijmehs' causes of action for breach of the implied covenant of good faith and fair dealing and violation of Business and Professions Code section 17200 are predicated on the cause of action for breach of contract. Because the Nijmehs did not demonstrate a triable issue of fact on their cause of action for breach of contract, their remaining two causes of action also fail. (See *Behnke v. State Farm General Ins. Co.* (2011) 196 Cal.App.4th 1443, 1470 [claim for bad faith denial of insurance benefits fails as a matter of law where insured cannot establish viable breach of contract claim].)

DISPOSITION

The judgment is affirmed. State Farm is to recover its costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.